

# **Exhibit 39**

**BUSINESS**

# The Billionaire Behind the Biggest U.S. Tax Fraud Case Ever Filed

Prosecutors accused Robert Brockman, a litigious, sometimes penny-pinching software entrepreneur, of hiding \$2 billion from the Internal Revenue Service

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More than 20 years ago, a group of former salesmen for Houston software entrepreneur Robert Brockman sued their old boss, claiming in court that he had deprived them of commissions by directing a portion of customer payments to a Cayman Islands entity.

Mr. Brockman twice appealed to the Texas Supreme Court as he tried to avoid answering detailed questions about the offshore entity, and he settled the case in 2001 under confidential terms.

Although the salesmen didn't realize it at the time, they had stumbled onto early signs of what the government later called the largest criminal case ever brought against a person accused of evading U.S. taxes. Federal prosecutors in October charged Mr. Brockman with using a web of offshore entities to conceal about \$2 billion in income from the Internal Revenue Service.

Mr. Brockman has pleaded not guilty to 39 criminal counts, including tax evasion, wire fraud, money laundering and evidence destruction. He and his attorneys didn't respond to requests for comment.

Prosecutors allege the bulk of the tax evasion stemmed from profits Mr. Brockman made from investments with Vista Equity Partners, a private-equity firm he helped launch in

2000 and which now manages \$73 billion in funds dedicated to software investments.

Vista founder Robert Smith, the wealthiest Black person in America, settled his own tax-evasion case with the government, which was made public on the day of Mr. Brockman's indictment. Mr. Smith has agreed to testify against his former mentor, one of at least two Brockman confidants to turn on him.

Some of the money in the criminal case against Mr. Brockman originated with the same Cayman Islands entity that the salesmen complained about years earlier, according to an IRS affidavit unsealed in December. The link between the two cases hasn't been previously reported.



Robert Brockman and Dorothy Brockman at a 2011 Rice University event in Houston.

PHOTO: DAVE ROSSMAN/HOUSTON CHRONICLE/ASSOCIATED PRESS

The record-setting case pits Mr. Brockman, a billionaire with a reputation as a relentless litigant, against the immense resources of the federal government. Legal specialists say the government appears to have strong evidence, but federal prosecutors may face challenges trying the case because of the complexity of tax laws governing offshore trusts.

In another potential hurdle for the government, the 79-year-old Mr. Brockman claims in court documents he can't be tried because he is suffering from dementia and is unable to assist in his own defense. Prosecutors said in court filings that he could be faking a mental decline. A hearing on his competency is scheduled for June, and if the court sides with Mr. Brockman, the charges could be dropped or deferred.

Despite his wealth, Mr. Brockman was virtually unknown outside of a small circle in Houston and the automotive industry until his indictment was announced in the fall.



One of Robert Brockman's cognitive test results submitted in court papers.

Court documents and interviews with his former employees, business associates and his younger brother portray him as a brilliant, sometimes penny-pinching executive with an antigovernment streak that led him to regard the IRS as a corrupt organization unfairly targeting taxpayers.

Mr. Brockman bought used furniture for company offices, rarely gave raises and forbade employees from smoking to save money on health insurance, according to former employees and associates. He stayed at budget hotels and ate frozen dinners in his room during monthly visits to one of his company's offices near Dayton, Ohio, a former vice president at his software firm recalled.

Most of the wealth he gathered over the years is held in a Bermuda trust that owns, among other things, nearly all of his software company. The firm, Reynolds & Reynolds Co., provides software to auto dealerships, and it had annual revenue of about \$1.4 billion, according to a now-defunct Brockman charity website. Mr. Brockman was chief executive of Reynolds & Reynolds until the indictment.

"The allegations made by the Department of Justice focus on activities Robert Brockman engaged in outside of his professional responsibilities with Reynolds & Reynolds," a company spokeswoman said in a statement. "Throughout numerous court filings and legal proceedings, the Company has never been alleged to have engaged in any wrongdoing in any way."

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The Bermuda trust has assets of at least \$7.7 billion, including \$1.4 billion in Swiss bank accounts, according to a confidential affidavit from Mr. Brockman's wife that was filed with a Bermuda court and reviewed by The Wall Street Journal. A lawyer for a former trustee suggested in a recent Bermuda court hearing the trust's total value could be as high as \$10 billion.

That level of wealth would rank Mr. Brockman around 50th on the most recent Forbes 400 list of U.S. billionaires, well ahead of Twitter Inc. CEO Jack Dorsey and Fidelity Investments magnate Edward Johnson III. Mr. Brockman never appears on the list.

Among the assets Mr. Brockman has amassed: a Bombardier private jet, a 209-foot yacht, a 17,000-square-foot residence in Houston and a 5,800 square-foot cabin in Aspen, Colo., according to public records and court documents filed by prosecutors.



The Bombardier jet used by Robert Brockman.

PHOTO: BRAD T

The origin of his fortune dates back five decades, when Mr. Brockman founded a company that became a pioneer in developing software that helps automobile dealers manage nearly every aspect of their businesses, including inventory, pricing, promotion and credit reports.

He was among the first software executives to see the value of recurring revenue, locking customers into long-term contracts for a product that was essential to conducting business and difficult to substitute, former executives and customers said.

Over the years, Reynolds & Reynolds has been in litigation with numerous car dealers, some of whom alleged they were overcharged for mandatory upgrades, court documents show. The company denied the allegations and often won the cases.

Reynolds & Reynolds and its main competitor, CDK Global Inc., are the subjects of an antitrust probe by the Federal Trade Commission, according to a CDK securities filing. Reynolds & Reynolds declined to comment about the antitrust probe or past litigation. CDK didn't respond to a request for comment.

## Self-made man



Mr. Brockman and his younger brother, Thomas David Brockman, were raised in St. Petersburg, Fla. Their father, Alfred Eugene Brockman, was a gas-station owner, and their mother, Pearl, a physiotherapist, according to 1940 census records.

Dave Brockman recalled lean years growing up and said his brother “decided he didn’t love that and went out to make something of himself.”

Robert Brockman attended Centre College, a selective liberal-arts college in Kentucky, and paid his way partly by delivering laundry, his brother said. He married at age 18, according to records in Boyle County, Ky., and later divorced.

Mr. Brockman graduated from the University of Florida and after working at Ford Motor Co. shifted to International Business Machines Corp., where he became a top salesman. He married his current wife, Dorothy, in 1968.



An aerial view of Robert Brockman’s residence in Houston.

PHOTO: PICTOMETRY

The couple lived in Houston, where Mr. Brockman began teaching himself computer programming and started his software company, initially known as Universal Computer Systems Inc.

In building UCS, Mr. Brockman was particular about new hires, requiring that all job applicants take a test designed to determine their intelligence and suitability for a given role. Vista’s own employee-testing regimen is based on that.

After being hired, staffers had to account for every call at the office, and executives each week posted the names of those who made the most personal calls. Employees had to use a keypad to open doors around the building so managers could trace their movements.

Mr. Brockman would lead executives on dove-hunting trips to a ranch in Mexico. He kept a stash of guns at the company's Houston headquarters and in the trunks of the fleet of Mercedes sedans parked in the garage at his Houston home, former employees and visitors recall.



Robert Brockman and Dorothy Brockman during a Universal Computer Systems trip to Cancún in January 1995. The photo was included in an album distributed to employees who also attended.

Mr. Brockman's yearlong sales training program was effective, former employees said. Alumni graduated to high-level sales roles at such companies as Microsoft Corp. and Oracle Corp.

He liked to keep employees on edge, recalled a former executive, Bobby Tyson, who said Mr. Brockman once asked him "when was the last time you shot somebody between the eyes." The phrase, Mr. Tyson learned, meant to fire an employee at random. "Everybody understands they could be next," he recalled his boss saying.

Mr. Tyson, who described Mr. Brockman as a genius whom he still admires, said he once reluctantly carried out such a firing on orders from his boss.

Later, Mr. Tyson sued Mr. Brockman for unpaid compensation. He prevailed after a 6-year court battle, which ended after Mr. Brockman's appeal was rejected by the U.S. Supreme Court. Mr. Tyson said he ended up collecting about \$2.5 million.

Mr. Brockman's use of offshore entities started in 1981. That year, he and his late father flew to Bermuda to establish what became the A. Eugene Brockman Charitable Trust, Dave Brockman said.

The trust has given away more than \$100 million to charities since 2004, court records show. It also has six human beneficiaries, according to Bermuda court documents: Mr. Brockman, his wife, their son Robert Brockman II and a grandchild, along with Dave Brockman and his wife.

Dave Brockman, who once worked for UCS, said he hadn't had much contact with his brother for close to 20 years. He said the two had a falling out after Robert denied him a promotion he felt he deserved, and he quit.

He doesn't believe his brother did anything illegal, he said, but doesn't want any money connected to a criminal case. If offered money from the trust, Dave Brockman said, "I would refuse it. It's tainted money as far as I'm concerned."

## Money moves

The IRS was alerted more than 20 years ago to Mr. Brockman's offshore activities as a result of the litigation by his former salesmen.

In court documents, the salesmen asserted Mr. Brockman founded the Cayman Islands entity not only to evade paying commissions but also to avoid federal taxes. Mr. Brockman denied the allegations and said he had sold the entity years before, while retaining preferred stock in it.

In the late 1990s, two attorneys for the salesmen met with an IRS agent, according to people familiar with the matter. The IRS around this time began an audit of Mr. Brockman and obtained records from Bermuda about the trust, according to a different person familiar with the matter.

The outcome of the inquiry couldn't be determined. But when the Cayman Islands entity, Computer Terminals Ltd., was liquidated in the 1990s, "a substantial sum" made its way to a company in the Caribbean called Edge Capital Investments Ltd., according to the IRS affidavit. Edge Capital was controlled by Mr. Brockman outside of the Bermuda trust structure, prosecutors have alleged.

Mr. Brockman allegedly used \$30 million from Edge Capital to acquire the Aspen property and a Colorado fishing retreat, part of the purported tax evasion scheme, according to the indictment.



He also allegedly used Edge Capital to secretly purchase a portion of his own company's debt—an act prohibited by provisions in the loan agreements—at a sharp discount in the wake of the 2008 financial crisis, the indictment said. These allegations are potentially the most serious Mr. Brockman faces; each of the 20 wire-fraud counts related to the debt repurchase carries a maximum sentence of 30 years.

If Mr. Brockman's case goes to trial, Mr. Smith, Vista's chief executive, is expected to testify, marking a dramatic reversal in their lucrative relationship.



Robert Smith, chief executive of Vista Equity Partners, speaking during a 2018 conference in Beverly Hills, Calif.

PHOTO: PATRICK T. FALLON/BLOOMBERG NEWS

The two men met in the late 1990s, when Mr. Brockman was considering selling his company and was introduced to Mr. Smith, then a Goldman Sachs Group Inc. technology banker.

After Mr. Brockman decided against the sale, he presented an idea to Mr. Smith: He would back the younger man in a private-equity fund devoted to software—a rarity at the time. Mr. Brockman agreed to make an initial pledge of \$300 million, later increasing it to \$1 billion, according to a statement of facts Mr. Smith signed in October as part of his deal with the government.

The arrangement carried one unusual condition. Mr. Smith had to put a portion of his share of the fund profits into an offshore structure similar to Mr. Brockman's. Mr. Brockman said he didn't want his own foreign trust to be dragged into a U.S. court in the event of litigation against Vista, the statement of facts said.



Robert Brockman during the Universal Computer Systems trip to Cancún in January 1995, in a photo from an album distributed to employees who attended.

Mr. Brockman was the only investor in Vista's first fund, and became a major investor in a couple of subsequent funds. Many elements of Vista's playbook for maximizing profits at software companies followed Mr. Brockman's model, according to people familiar with Vista's early years.

In 2006, Vista helped Mr. Brockman's Universal Computer Systems finance the \$2.8 billion acquisition of much larger Reynolds & Reynolds, putting Mr. Brockman atop one of the two dominant players in the auto-dealer software business.

Mr. Smith, 20 years younger than Mr. Brockman, became as high-profile as Mr. Brockman was publicity-shy. In 2019, Mr. Smith pledged to pay off the student loans held by the graduating class of Morehouse College, a historically black college in Atlanta. He owns

one of Manhattan's most expensive properties—bought for nearly \$60 million in 2018—and is chairman of Carnegie Hall. He divorced his wife and married the 2010 Playboy Playmate of the Year.

Messrs. Smith and Brockman were both targets of the government's tax probe. But in October, Mr. Smith reached a nonprosecution agreement with the government that included Mr. Smith's admission that he evaded paying taxes on more than \$200 million in income, using an offshore arrangement similar to one allegedly used by Mr. Brockman.

Mr. Smith agreed to pay \$139 million in back taxes and penalties and cooperate against Mr. Brockman, the government said.

## Hidden records

Prosecutors allege Mr. Brockman set up an encrypted email system to communicate with those involved in his offshore structure. They referred to each other using such fishing-related code names such as "Permit," for Mr. Brockman, and "Steelhead," for Mr. Smith, according to the indictment; the IRS was "The House."

Around 2007, Mr. Brockman hired a Bermuda attorney, Evatt Tamine, to help manage the offshore structure. Mr. Tamine became Mr. Brockman's right-hand man and acted as the trustee of the main Brockman trust. Prosecutors, citing dozens of examples, allege in the indictment that Mr. Tamine was only a figurehead, and Mr. Brockman secretly directed every move.

A trust set up by a U.S. taxpayer's forebears—as with the Brockman trust—may not be subject to tax as long as it is run independently and no money flows to the taxpayer, according to tax specialists. By claiming that Mr. Brockman was secretly running the trust, prosecutors may be building a case that it was either a sham or a type of controlled trust that is taxable to him, said Matthew McKim, an offshore-tax lawyer at Loeb & Loeb LLP.

In one of Mr. Tamine's early performance reviews, included in a court filing, Mr. Brockman instructed him to keep records on "an encrypted USB dongle carried in a different location in luggage when traveling" and to run a software program called "Evidence Eliminator."



The yacht used by Robert Brockman, in Gibraltar.

PHOTO: GIBFRAN46

Mr. Brockman learned of the tax investigation in June 2016, according to prosecutors. Soon after, a former UCS executive involved in the offshore structure, Don Jones, died. Mr. Tamine made several trips to the home of Mr. Jones's widow in Mississippi to destroy documents and computer drives, according to Mr. Tamine's account in one of his performance reviews filed with the court.

"Those efforts meant that we could rest easily that any attempt to search Don's home would be fruitless," Mr. Tamine reported to his boss, according to the court filing.

Bermuda authorities instead raided Mr. Tamine's home at the request of the U.S. in September 2018. He agreed to cooperate in the case against Mr. Brockman and gave authorities access to the encrypted email server.

Prosecutors allege that Mr. Brockman began seeking medical evaluations of his mental acuity shortly after the raid.

A doctor in March 2019 said the executive was operating intellectually with an IQ of 87 and exhibited poor short-term recall, according to one of the medical reports submitted in court by Mr. Brockman's attorneys.

Prosecutors say Mr. Brockman's doctors have an apparent conflict of interest because they are affiliated with Baylor College of Medicine. The Brockman trust has donated millions of dollars to the school, and Mr. Brockman has served as a board trustee. A Baylor spokeswoman declined to comment.

Mr. Brockman continued to run his multibillion-dollar software company during this period, and he gave “long and cogent answers” during a two-day legal deposition in September 2019, prosecutors said.

Two weeks later, Mr. Brockman took a cognitive test in which he had trouble drawing a clock face, according to court filings, resulting in a finding of “moderate dementia.”

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